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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE  
17 COMMISSION,

18 Plaintiff,

19 vs.

20 MARK LESLIE, et al.,

21 Defendants.

Civil Action No. C 07-3444 JF

**PLAINTIFF SEC'S MOTION TO  
APPOINT DAMASCO & ASSOCIATES  
AS TAX ADMINISTRATOR**

**THE SEC'S MOTION TO APPOINT DAMASCO & ASSOCIATES  
AS TAX ADMINISTRATOR**

22 The Securities and Exchange Commission ("SEC" or "Commission") respectfully requests  
23 that the Court enter an Order appointing Damasco & Associates, a certified public accounting firm  
24 located in San Francisco, California, as Tax Administrator to execute all income tax reporting  
25 requirements, including the preparation and filing of tax returns, with respect to funds under this  
26 Court's jurisdiction in this case.

27 By orders dated August 1, 2007, the Court entered Final Judgments as to defendants Michael  
28 M. Cully and Douglas S. Newton pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

PLAINTIFF SEC'S MOTION TO APPOINT  
DAMASCO & ASSOCIATES AS TAX  
ADMINISTRATOR  
SEC v. MARK LESLIE, et al., Civil Action No. C  
07-3444 -JF

Pursuant to the Final Judgments, defendant Michael M. Cully paid a total of \$216,470.67 of disgorgement and penalty to the Clerk of this Court and defendant Douglas S. Newton paid a total of \$62,263.36 of disgorgement and penalty to the Clerk of this Court (the "Settlement Fund"). The Settlement Fund was thereafter deposited in an interest-bearing account under the case name designation "SEC v. Mark Leslie, et al." The Settlement Fund constitutes a Qualified Settlement Fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator, on behalf of the Settlement Fund, should be appointed and authorized to take all necessary steps to enable the Settlement Fund to obtain and maintain the status of a taxable QSF, including the filing of all required elections and statements contemplated by those provisions. The Tax Administrator would cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a QSF. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator's duties would be paid by the Settlement Fund in accordance with the agreement between the Commission and the Tax Administrator.

In summary, this agreement provides for compensation for services and expenses as follows:

SERVICE	FIXED FEE
Income tax returns, including items 1-6 (below).	\$1675
Loss Carryback (claim for refund) returns.	\$550

Fixed fee tax compliance services include<sup>1</sup>:

1. Obtain a federal tax identification number ("FEIN") for the QSF;

<sup>1</sup> These fixed fees include all copying and routine postage expenses. They also include any internal expenses of the Tax Administrator in performing these services, such as facsimile fees and telephone charges. Expenses that are not included are expedited delivery fees (such as Federal Express) and other extraordinary costs, such as extended telephone conferences and reports. Additional tax compliance services and services for the administration of the QSF would be provided at the Commission's request and billed at the Tax Administrator's current rates discounted by 20%.

2. Prepare and file federal and state income tax returns, as required;
3. Where required, calculate quarterly estimated tax payments and provide information to the Court so that payments may be made timely;
4. Make arrangements with the SEC or its agents to pay tax liability;
5. Calculate and recommend retention of a reserve, if necessary, for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes; and
6. Determine and comply with tax reporting obligations of the QSF relating to distributions or payments to vendors, if applicable.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Dated: October 23, 2007

Respectfully submitted,

/s/ Richard Hong

Richard Hong  
Assistant Chief Litigation Counsel

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CERTIFICATE OF SERVICE

Pursuant to 28 U.S.C. § 1746, I hereby certify that on this day, October 23, 2007, I electronically filed the foregoing motion and the attached proposed with the Clerk of the Court by using the ECF system and relied upon that system's automatic service of the foregoing document and the attached proposed order upon counsel, which will send notification of such filing to the ECF participants.

In addition, on this day, October 23, 2007, the undersigned caused a copy of the foregoing documents to be served by regular first class mail to the following:

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